WP(C) 5719/2006
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY

JUDGMENT AND ORDER

The petitioner, a shareholder of Kampur Co-operative Society (hereafter referred to as the Society) has questioned the validity of the proceedings of the Annual General Meeting and elections to its Managing Committee held on 29/10/2006. By order dated 17/11/2006, this Court while issuing notice on the challenge restrained the respondent authorities from allowing the newly elected Managing Committee to assume office and function.

2. I have heard Mr. AK Goswami, Sr. Advocate assisted by Mrs. P. Barman, Advocate for the petitioner, Mrs. VL Sinha, learned State Counsel for the official respondents, Mr. G. Baishya, learned Counsel for the respondent No. 6 and Mr. MK Boro, learned Counsel for the respondent No. 7.

3. The factual foundation of the petitioner's impugnment is available in the writ petition. He has asserted that the Chairman of the Committee by notice dated 14/10/2006 intimated the date of Annual General Meeting and the elections to be fixed on 29/10/2006 at Kampur Kameswar Barthakur MV School. The notice disclosed inter alia that election of 12 members of the Managing Committee would also be held on that day. Out of the said members eight would be elected from the first group and four from the second group. Thereby the members belonging to class Gha and loanee members were debarred from casting their votes as well as contesting the elections. Only members of class Ka (Group I and II) and Ga who had not taken loans were declared to be entitled to vote and contest the elections. The petitioner having decided to contest for the post of Chairman submitted his nomination paper on 19/10/2006 along with other candidates. In all 5 candidates submitted their nomination papers for the said post. The nomination papers of the petitioner along with that of the respondent No. 6 and others were accepted to be valid. In the elections held, the petitioner secured 249 votes and thus lagged behind respondent No. 6 with 495 votes. The latter was, therefore, elected as the Chairman of the Society.

4. The petitioner has stated that in terms of the Model Bye-Laws for New Gaon Panchayat Level Co-operative Societies, Assam (hereafter referred to as the Bye-Laws) and applicable to the Society shareholders thereof were categorized into two groups Part I and Part II. Whereas Part I included weaker section of shareholders, the strong shareholders were in Part II. Clause 3(i)(ii) thereof defined weaker section of Community corresponding to the Part I weak shareholders. The petitioner has alleged that though the respondent No. 7 is a shareholder of Part I, he filled up his nomination paper representing himself to be a Part II shareholder and contested the elections for being returned as a member from Part II shareholders. As he was elected as such, out of four members to be elected from Part II list, only three were elected therefrom the respondent No. 7 being a Part I shareholder. This apart, according to the petitioner, the respondent No. 7 also acted as the proposer of respondent No. 6 for his candidature for the post of Chairman similarly posing himself to be a shareholder from Part II and thus the nomination paper of the respondent No. 6 was wrongly filled up and was defective. Contending that the election of respondent No. 6 and 7 was liable to be declared invalid on these grounds, the petitioner has further imputed that the proceedings of the election were also vitiated by the casting of votes of defaulter members and of more than one person from the same family. Moreover, the name of one successful candidate namely Bibi Hazarika appeared twice in the voters' list i.e. Bibi Hazarika and Nabin Ch. Hazarika. The petitioner has further complained that votes were also cast in the name of dead persons. Being aggrieved, he submitted a complaint before the Assistant Registrar, Co-operative Societies, Nagaon, highlighting the above anomalies whereupon the said authority on 3/11/2006 directed one Shri Pradip Chandra Borah, Sr. Inspector/Auditor, to conduct an enquiry and submit a report. An appropriate writ has, therefore, been prayed for to quash the proceedings of the election and to direct the official respondents to hold a fresh election by following the mandatory provisions of the Assam

Co-operative Societies Act, 1949, the Rules framed thereunder as well as the By elaws.

5. The State respondents have not filed their affidavit. The respon dent No. 6 has filed two counters, one in the individual capacity and the other along with respondent No. 7. While dismissing the alleged illegalities highlight ed by the petitioner, the said respondent has asserted that the objections with regard to the proceedings of the election are all after thought. According to th e answering respondent, his nomination paper was found to be valid by the return ing officer on scrutiny and though it was done in presence of the petitioner as well, he did not raise any objection thereto. The respondent No. 6 maintained th at in the enquiry that was held, no anomaly as alleged had been detected. He ave rred that before finalizing the voter list, the shareholders by a notification d ated 3/8/2006 were granted the option to raise objections, if any, making it cle ar that no demur after 15/8/2006 would be entertained. The petitioner did not ma ke any complaint with regard to inclusion of defaulter or dead persons in the vo ters list. In the joint affidavit while reiterating the above, it has been asser ted that respondent No. 7, Shri Arup Sarma belongs to Part II shareholder being enlisted at Sl. No. 1121 of No. 4865 Village Jyotinagar. The document annexed to the writ petition indicating him to be a member of Part one has been discarded as fake and manufactured. That no complaint by the petitioner to the said effect has been ever lodged before the elections has also been stated. Without prejudi ce to the above, it has been further affirmed that even assuming that the respon dent No. 7 belongs to the Part I group, neither his candidature for being electe d as a member of Part II or the nomination of the respondent No. 6 stood invalid ated thereby. The respondents contended that as per the guidelines relating to t he conduct of elections issued by the Registrar of Co-operative Societies, Assam , vide memo dated 11/7/1986 anyone objecting to the eligibility of any candidate in filing his nomination was required to lodge a complaint before the Assistant Registrar of Co-operative Societies by the following day with all documentary e vidence. Though the nomination papers for the instant election for the different posts were accepted on 19/10/2006, no reservation what so ever was made by the petitioner. No protest having been registered by the petitioner at any stage of the process of preparation of the voters' list as well as the scrutiny of the no mination papers, the same were accepted by the Managing Committee by its resolut ion dated 27/9/2006 and was also approved by the Assistant Registrar of Co-opera tive Societies, Nagaon.

6. Mr. Goswami referring to the byelaws more particularly Clause 21 B thereof has argued that it having been prescribed thereby that eight members a nd four members were to be elected to the Managing Committee of the Society from amongst individual members holding A class shares and included in Part I and Pa rt II list of shareholders, the election of respondent No. 7 as a Part II member is in patent contravention of the byelaws and is thus liable to be adjudged nul l and void. The said respondent being a member of Part I of the list of sharehol ders, the nomination of respondent No. 6 wherein the former has acted as his pro poser posing himself to be a member of Part II, is ex-facie invalid and conseque ntially his election is also nonest in law. The notice of election having limite d the right of franchise and contesting the elections only to the members belong ing to Class A (Part I and Part II) and Class C members who have not taken loans , the proceedings of the election stood thoroughly vitiated to the core votes ha ving been cast inter alia by defaulters and in the names of dead persons. In all , the learned Sr. Counsel urged that the impugned elections is afflicted by incu rable illegalities and, therefore, an appropriate writ ought to be issued to adj udge the same as ineffectual and inoperative in law.

7. Mr. Baishaya in reply while conceding to the prescription of the byelaws with regard to the ratio of the elected members stipulated by Clause 21 B thereof has argued that the requirement was not mandatory as no consequence fo r the breach thereof is mandated. According to him, there is no bar what so ever for a shareholder of Part I to contest for being elected as a member of Part II and vice versa. By an analogy of reasoning, the learned Counsel urged that the nomination paper of respondent No. 6 also remain unscathed though his candidatur

e had been proposed by respondent No. 7. Referring to a notice dated 3/8/2006 re lating to the process of finalizing the voters list, Mr. Baishya urged that the petitioner having omitted to complain against any entry therein at any point of time before the deadline fixed, he was estopped from questioning the same at thi s belated stage. To buttress his arguments, the learned Counsel placed reliance on the decision of the Apex Court in Sharif-ud-din versus Abdul Gani Lone, (1980) 1 SCC 403.

8. Mr. Boro while endorsing the above has maintained that the respo ndent No. 7 was at all relevant times a shareholder in Part II and that therefor e all contentions pertaining to his ineligibility for being elected as a member of the said group and invalidity of the nomination paper of respondent No. 6 are per se unsustainable.

9. The learned State Counsel has produced the relevant records cont aining inter alia the report in the enquiry conducted on the petitioner's repres entation as well as by the Zonal Joint Registrar of Co-operative Societies, Guwa hati, on the same issue.

10. Before embarking on the rival submissions, it would be appropria te to refer to the byelaws. Clause 3 (i)(ii) defines weaker section of the comm unity to mean and include families owning or cultivating less than 9 bighas of land or earning an income of less than Rs. 200/- per year or as determined by th e Registrar of Co-operative Societies. Clause 21 prescribes the constitution and term of office of the Managing Committee. Thereunder, the Managing Committee wo uld comprise of nominated and elected members. Whereas Clause 21A stipulates the composition of the nominated members Clause 21B deals with elected members. The reunder eight members are to be elected by the general assembly from amongst the individual members holding 'A' class shares and included in Part I and four mem bers from Part II. Clause 15 enjoins upon the Managing Committee to maintain a l ist of individual members of the Society holding A Class shares divided into par ts. Part I is to include weaker section of community and Part II other individ ual members holding the same class of shares.

11. A cumulative reading of the above provisions of the byelaws does proclaim that thereunder the make up of the Managing Committee as envisaged in Clause 21 is an essential imperative. In other words, the constitution of the Ma naging Committee as prescribed by the byelaws is indispensable. The nominated as well as elected members ought to be as comprehended therein. It, therefore, log ically follows that the members to be elected from Part I and Part II shareholde rs should necessarily belong to their respective groups and any transposition in ter se would be antagonistic to the edict of the bye laws and mutilative of the basic structure of the Managing Committee.

12. The decision of the Apex Court in Sharif-ud-din, supra, does not reinforce the contention of the private respondents that the composition of the elected members in the Managing Committee is directory in nature. While dealing with certain broad propositions to determine the mandatory or directory status of a rule or a provision thereof, the Apex Court held that if the object of a la w is defeated by a non-compliance of any provision, it has to be regarded as man datory. It ruled that whenever a statute prescribed that a particular act is to be done in a particular manner and also laid down that the failure to comply wit h the requirement prescribed would lead to specific consequence, it would be dif ficult to hold that the same is not mandatory.

13. Having regard to the objective of section 21B in the scheme of t he byelaws, the consequence of the departure from its prescriptions need not be spelt out, being obvious. The byelaws having been framed to provide for all conc eivable aspects of the constitution and administration of a Society within its p urview, no relaxation in any ordainment thereof can be readily inferred. The pro position advanced on behalf of the private respondents, if accepted, would be de structive of the proclaimed fabric of the Managing Committee rendering the said provision of the byelaws otiose. This clearly is not permissible.

14. The above determination does not ipso facto resolve the controve rsy. A plain reading of the petitioner's representation dated 30/10/2006 before the Additional Registrar of Co-operative Societies, Nagaon, however, does not re

fer to his remonstrance against the election of respondents 6 and 7 on the above count. His complaint relates to voting by ineligible persons namely defaulters, members of same family etc. A conflicting stand of the parties about the part to which the respondent No. 7 belongs, is also noticeable. Whereas the extract of the voters list annexed to the writ petition discloses the respondent No. 7 to be a member of weak category, he is depicted to belong to the strong category in the document to the said effect submitted by the respondents 6 and 7 with their counter. The private respondents have also impeached the extract of the voters list annexed by the petitioner as a forged document.

15. The records produced reveal that pursuant to the direction of the Assistant Registrar of Co-operative Societies, Nagaon, Shri PC Bora, Sr. Inspector of Co-operative Societies, Nagaon, had conducted an enquiry on the complaint filed by the petitioner mentioning the anomalies in the election. The report inter alia discloses that Shri Nilakanta Tamuly and Shri Pelon Momin referred to in the complaint were defaulter members in the voters list. Additionally one Shri Bakul Laskar (Sl. No. 1493/Member Sl. No. 1112) was also a defaulter appearing in the said list. The Enquiry Officer concluded that Shri Bibi Hazarika and Shri Nabin Hazarika were the same person and that both the names were included in the voters list. The report reveals that the respondent No. 7 is a member of Part I but had contested the election from Part II and had been elected. Further one Md. Hasan Ali son of Ishamuddin is not a member of the Society. However, Md. Abdul Hasan whose name appears at Sl. No. 1369 of the voters list is the son of Md. Ishamuddin. Though he belongs to Part I, he had filed his nomination from Part II. The Enquiry Officer categorically noted that Shri Arup Sarma, respondent No. 7 and Md. Hasan Ali were elected from the stronger group though they belong to the weaker section which is in breach of Clause 21B of the Byelaws.

16. The report of the Zonal Joint Registrar of Co-operative Societies, Guwahati Zone, Bhangagarh, based on an enquiry held on 30/11/2006 discloses that therein along with the Assistant Registrar of Co-operative Societies, Nagaon, and Deputy Registrar of Co-operative Societies, Nagaon, the respondent No. 6 was also present and their versions were also recorded. The report has a reference of the representation submitted by the petitioner with the allegations made therein. The Zonal Joint Registrar of Co-operative Societies noticed that the petitioner had not submitted any claim or objection regarding the voters list though entitled in terms of the notice dated 3/8/2006 in connection with the updating process thereof and that he instead had given a written declaration before the commencement and after the completion of the election that the same had been conducted smoothly. The said authority also took note of the report of the Returning Officer that the election had been conducted without any flaw. The delay on the part of the Sr. Inspector of Co-operative Societies, Nagaon, in submitting his report following the enquiry on the petitioner’s representation was criticised. It was concluded that the said Officer had intentionally delayed the enquiry with ulterior motive. The Zonal Joint Registrar even inferred some connivance of the petitioner with the Enquiry Officer and the Assistant Registrar of Co-operative Societies, Nagaon, as alleged by the respondent No. 6. The objections raised by the petitioner were rejected as frivolous and after thoughts. According to the said authority, the allegation that 12 ineligible voters had cast votes did not render the elections invalid in view of the margin by which the respondent No. 6 had won the same.

17. A plain reading of the said report proclaims that the revelations in the enquiry conducted by Shri PC Bora, Sr. Inspector of Co-operative Societies, Nagaon, were not accorded any weight whatsoever in view of the delay in concluding the exercise. On the other hand the credibility of the said Officer as well as that of the Assistant Registrar of Co-operative Societies, Nagaon, was doubted acting on the version of the respondent No. 6. There is no indication in the records as to whether the petitioner particularly being the objector had been notified of the enquiry to be conducted by the Zonal Joint Registrar of Co-operative Societies. This assumes importance not only because of the ex-parte rejection of his challenge but also of the stigma of collusion cast on him relying on the untested testimony of respondent No. 6. The way the Zonal Joint Registrar of

Co-operative Societies had trivialized the cavil regarding votes cast by ineligible and nonexistent persons is distressing. No attempt whatsoever was also made to enquire about the respondent No. 7’s orientation in the list of shareholders. His location in Part I or Part II of the list of Class A shareholders has a definitive bearing on the validity or otherwise of the elections in view of Clause 21B of byelaws and the consequences of the contravention thereof.

18. On a consideration of the totality of the materials on record, I am of the considered opinion that the issues raised before this petition deserve a fresh scrutiny by the appropriate authorities in accordance with the provisions of the Act, Rules and the Byelaws. The controversy, which confronts this Court, is replete with the disputed facts, which in the exercise of its writ jurisdiction is neither practicable nor advisable to be delved into. The report of the Zonal Joint Registrar, Guwahati Zone, however, in the face of the reasons cited herein above does not inspire the confidence of this Court. No final decision on the basis thereof can be decisively arrived at.

19. This petition in the above factual premise therefore stands disposed with the direction that the matter stands remitted to the Registrar of Co-operative Societies, Assam, to cause a fresh enquiry to be made on the petitioner’s representation bearing on the alleged anomalies in the elections of the Society held on 29/10/2006. The above named authority would entrust a competent Officer other than those already involved in the enquiries mentioned above. The petitioner and the private respondents would be notified about the enquiry and extended an opportunity of participation therein. It would be open for the Enquiry Officer to notice and hear any other person whom he considers relevant. Needless to say, the said Officer would also be at liberty to consult all essential records in this regard. The exercise indicated hereinabove should be completed within a month herefrom. Till a final decision is so taken, status quo with regard to the Managing Committee of the Society as on date shall be maintained.

The petition is thus partly allowed in the above terms. No costs.